

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2934 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ML PATEL

Versus

SURENDRA OCCHAVLAL SHAH

Appearance:

MR RR VAKIL for Petitioners

MR SAMIR DAVE for Respondent No. 2

None present for other Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/01/97

ORAL JUDGEMENT

1. The petitioner no.1 is the Hon. Secretary of Sunav Kelvani Mandal which is a trust registered under the Bombay Public Trusts Act, 1950. This trust is running secondary school at Sunav known as V.B. Vividhlaxi Vidhyalaya, and the petitioner no.2 is the principal of the said school.

2. The petitioners have challenged by this Special Civil Application the order dated 15-3-1985 of the Gujarat Secondary Education Tribunal at Ahmedabad in Application No.252/83 made by the respondent no.1, teacher. Under the aforesaid order, the Gujarat Secondary Education Tribunal has set aside the order of the petitioners under which the respondent no.1 was ordered to be dismissed from the services of the school by way of penalty, and the penalty of dismissal was ordered to be substituted by penalty of reversion.

3. The counsel for the petitioners contended that the Tribunal has committed serious illegality in making interference in the matter only on the ground that no inquiry has been held against the respondent no.1. In this case, the guilt has been admitted by the respondent no.1 during the inquiry in the reply to the show-cause notice. No regular departmental inquiry was necessary. It has next been contended that the charges against the respondent no.1 were of serious nature, and as such, the penalty of dismissal which has been given to him was proportionate to the guilt and no interference should have been made therein by the Tribunal.

4. On the other hand, the counsel for the respondent no.2 supported the order of the Tribunal.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The counsel for the petitioner during the course of arguments has admitted that the only misconduct alleged against the respondent no.1 was that he abused one Shri Manibhai, guardian of the student, in contemptuous manner and insulted him, as he belonged to schedule caste i.e. Harijan and also used filthy language about him. It is not in dispute that the respondent no.1 was holding the post of Head Clerk on which he was promoted on 1-4-1982 from the post of Senior Clerk. A criminal case has also been filed against respondent no.1 in connection with the aforesaid incident. The respondent no.1 has been convicted in the criminal case by the trial court for an offence punishable under sec.4 of the Protection of Civil Rights Act, 1955, and sentenced to undergo simple imprisonment for four months and to pay fine of Rs.300/-, and in default of payment thereof, to further undergo simple imprisonment for two months. He filed an appeal against the judgment of the trial court and though the conviction of the respondent no.1 has been maintained by the appellate court, but the sentence passed by the trial court was ordered to be reduced and he was ordered to be sentenced to undergo simple imprisonment of one month and

fine of Rs.100/-.

6. It is not the case where the Tribunal has interfered in the matter only on the ground that the inquiry has not been held against the respondent no.1. Contrary to it, the Tribunal has taken it to be a case where the respondent no.1 has committed misconduct, but the penalty of dismissal which has been given by the petitioner to the respondent no.1 was taken to be excessive and harsh in the facts and circumstances of the present case. It is not the case where the respondent no.1 has been chargesheeted with any of the misconduct of misappropriation of fund of the school or dishonesty. It is a case where one of the guardians of the student has been abused by him as well as insulted. The charges in the inquiry were to certain extent identical to the charges of the criminal case and in the presence of these facts, the view taken by the Tribunal to consider the punishment of dismissal to be excessive and harsh does not call for interference of this court. The punishment to be given in the departmental inquiry should commensurate to the guilt proved and where the respondent no.1 has been punished for his act of misbehaviour and insulting one of the guardians in the school, the penalty of dismissal from services for the alleged act is towards the higher side. The matter would have been different, as stated earlier, where the respondent no.1 would have been involved in an offence of moral turpitude.

7. Taking into consideration the totality of the facts of this case, I do not find any infirmity or illegality in the order of Tribunal which calls for interference of this court.

8. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this court stands vacated.

zgs/-